81-475

No. _____

Office-Supreme Court, U.S.
FILED
SEP 9 1981
ALEXANDER L. STEVAS,
CLERK

In The

Supreme Court of the United States

OCTOBER TERM, 1980

EASTERN CONFERENCE OF TEAMSTERS,

Cross-Petitioner,

versus

RONALD SINE AND LARRY DANNER,

Cross-Respondents.

Cross-Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

JONATHAN G. AXELROD
(Counsel of Record)
HUGH J. BEINS

Beins, Axelrod & Osborne, P.C.
1511 K Street, N.W., Suite 300
Washington, D.C. 20005
(202) 638-4620

Attorneys for Cross-Petitioner,
Eastern Conference of Teamsters

C 442

QUESTIONS PRESENTED*

1. Whether the statute of limitations which governs an employee's action against an employer to vacate an arbitration award also governs the action against the union for breach of the duty of fair representation in the arbitration proceeding.

2. Whether a union member who can obtain full relief through his internal union procedure should be required to exhaust such procedure prior to filing an action against his union for breach of the duty of fair representation.

---

*In addition to the Eastern Conference of Teamsters, Ronald Sine and Larry Danner, Mitchell Transport, Inc. and Local 992, International Brotherhood of Teamsters were parties to the proceeding below.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	2
JURISDICTION	2
STATUTE INVOLVED	2
STATEMENT OF THE CASE	3
A. Facts	3
B. The District Court Decision	4
C. The Court of Appeals Decision	4
D. Proceedings Before this Court	5
REASONS FOR GRANTING THE WRIT	
I. The Cross-Petition Addresses A Major Question of Labor Law Left Unresolved By The Court's Recent *United Parcel Service* Decision	5
II. The Cross-Petition Addresses A Major Question of Labor Law Left Unresolved By the Court's Recent *ITT Gilfillan* Decision	8
CONCLUSION	9
ORDER DENYING PETITION FOR REHEARING	A-1
OPINION OF THE COURT OF APPEALS	B-1
DECISION OF THE DISTRICT COURT	C-1

TABLE OF AUTHORITIES

Cases:	Page
Bowen v. United States Postal Service, 642 F.2d 79 (4th Cir. 1981)	8
Butler v. Teamsters Local 823, 514 F.2d 442 (8th Cir. 1975), cert dendied, 423 U.S. 924 (1975)	8
Clayton v. UAW [ITT Gilfillan], ___ U.S. ___ (1981)	8-9
Czosek v. O'Mara, 397 U.S. 25 (1970)	7
de Arroyo v. Sindicato de Trabajadores Packinghouse, 425 F.2d 281 (1st Cir. 1970), cert denied, 400 U.S. 877 (1970)	8
Hines v. Anchor Motor Freight, Inc. 424 U.S. 554 (1976)	5
IBEW v. Foust, 442 U.S. 42 (1979)	8
Milstead v. Teamsters Local 957, 649 F.2d 395 (6th Cir. 1981)	8
NLRB v. Electrical Workers Local 485, 454 F.2d 17 (2d Cir. 1972)	8
United Air Lines, Inc. v. Evans, 431 U.S. 553 (1977)	6
United Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696 (1966)	5-6
United Parcel Service v. Mitchell, ___ U.S. ___ (1981)	5-6, 9
Vaca v. Sipes, 386 U.S. 171 (1967)	6

Statutes: Page

29 U.S.C. § 185(a) 2

Md. Cts. & Jud. Proc. Code Ann. § 3-201, et seq. 4

Miscellaneous:

Feller, A general Theory of the Collective Bargaining Agreement, 61 Cal. L. Rev. 663 (1973) . 8

In The

Supreme Court of the United States

October Term, 1980

No. _____

Eastern Conference of Teamsters,

Cross-Petitioner,

v.

Ronald Sine and Larry Danner,

Cross-Respondents.

Cross-Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

Petitioner, Eastern Conference of Teamsters, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered on May 12, 1981, which affirmed in part, vacated and remanded in part, a decision of the United States District Court for the District of Maryland.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 644 F.2d 997. It is reproduced *infra* in Appendix (hereafter "App.") B1 - B14.

The decision and order of the United States District Court for the District of Maryland dated August 28, 1979, is unreported and is reproduced *infra* (App. C1 - C7).

JURISDICTION

The initial judgment (App. B1 - B14) of the Court of Appeals was entered on March 24, 1981. The Court of Appeals denied Sine and Danner's petition for rehearing (App. A1 - A2) on May 12, 1981. Sine and Danner filed a Petition for a Writ of Certiorari on August 10, 1981.

STATUTE INVOLVED

Section 301(a) of the Labor Management Relations Act of 1947 (61 Stat. 156, 29 U.S.C. § 185(a)) provides, in pertinent part:

> § 185. Suits by and against labor organizations
>
> (a) Venue, amount, and citizenship. Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Cross-Petitioner received Cross-Respondents' Petition for a Writ of Certiorari on August 13, 1981.

STATEMENT OF THE CASE

A. Facts

Cross-Petitioner Eastern Conference of Teamsters (hereafter "the Conference") is an unincorporated labor organization affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. In early 1977, the Conference provided an attorney to assist Teamsters Local 992 (hereafter "Local 992") in processing a grievance filed by Ronald Sine and Larry Danner. The grievance was submitted to the Eastern Area Tank and Cement Haul Joint Area Committee (hereafter "the Joint Committee") pursuant to the contract between Local 992 and Mitchell Transport, Inc. (hereafter "Mitchell"). The Joint Committee deadlocked the Sine and Danner grievance, thereby referring the grievance to an arbitrator (App. B7, C2 - C3).

As a result of the deadlock, Mitchell and Local 992, pursuant to the contract, utilized the services of the Federal Mediation and Conciliation Service to select an arbitrator. Jay Kramer, Esq., a nationally known arbitrator and former Chairman of the New York State Labor Relations Board, was selected (App. C3).

On October 3, 1977, Mitchell and Local 992, again assisted by an attorney from the Conference, arbitrated the Sine and Danner grievance. A court reporter was present and made a transcript of the proceedings. Both Local 992 and Mitchell submitted a large number of exhibits, including a three volume transcript of an earlier civil action litigated before the United States District Court for the District of Maryland. Both counsel for Local 992 and counsel for Mitchell submitted post-hearing briefs.

On August 22, 1978, after examining this voluminous record, Arbitrator Kramer issued his decision denying Sine and Danner the back pay they sought, but granting their requested seniority based upon an intervening change in the

relevant provision of the collective bargaining agreement. Sine and Danner both received copies of Arbitrator Kramer's award prior to September 1, 1978, as did their private attorney, Harry Goldman, Jr. (App. B8, C3).

On November 20, 1978, Sine and Danner filed suit in the District Court for the District of Maryland, alleging that Local 992 and the Conference breached their duty of fair representation and seeking to vacate only that portion of the arbitration award which was unfavorable to them (App. C3).

B. The District Court Decision

On August 28, 1979, the District Court granted motions for summary judgment filed by Mitchell, Local 992 and the Conference. The District Court held that Sine and Danner's action to vacate the arbitration award was barred by the 30-day statute of limitations. Md. Cts. & Jud. Proc. Code Ann. § 3-201, et seq. (App. C5 - C6). The District Court also concluded that Sine and Danner's grievance lacked merit and that Local 992 and the Conference did not breach the duty of fair representation.

C. The Court of Appeals Decision

On March 24, 1981, the Court of Appeals for the Fourth Circuit held that the Maryland statute of limitations barred the action against Mitchell to vacate the arbitration award (App. B8 - B12). However, the Court of Appeals implicitly held that the Maryland statute did not preclude an action against Local 992 and the Conference. As to them, the Court held that the District Court had not sufficiently analyzed the relevant facts and that it had, therefore, improperly granted summary judgment to the Conference and Local 992. The Court of Appeals remanded and directed the District Court to reconsider the case on the existing record or to schedule the case for trial (App. B12 - B14).

On May 12, 1981, after considering this Court's decision in *United Parcel Service v. Mitchell*, ___ U.S. ___ (1981), the Fourth Circuit denied Sine and Danner's petition for rehearing (App. A1 - A2).

D. Proceedings Before this Court

On August 10, 1981, Sine and Danner filed a Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit, No. 81-314. Sine and Danner urge the Court to find the 30-day Maryland statute of limitations unduly restrictive and to apply either a 90 or 180-day statute of limitations.

REASONS FOR GRANTING THE WRIT

I. THE CROSS-PETITION ADDRESSES A MAJOR QUESTION OF LABOR LAW LEFT UNRESOLVED BY THE COURT'S RECENT *UNITED PARCEL SERVICE* DECISION.

Suits alleging violations of a collective bargaining agreement are governed by Section 301 of the Labor Management Relations Act. In *United Auto Workers v. Hoosier Cardinal Corp.*, 383 U.S. 696, 704-705 (1966), this Court held that the timeliness of such actions must be determined "by reference to the appropriate state statute of limitations." More recently, in *United Parcel Service, Inc. v. Mitchell*, ___ U.S. ___ (1981), the Court held that, in a hybrid action alleging both a union's breach of the duty of fair representation in a completed arbitration and an employer's breach of contract, a state statute of limitations governing suits to vacate arbitration awards barred an action against the employer. Because the union did not seek review, the Court did not consider the effect of its decision on the action against the union.

In *Hines v. Anchor Motor Freight, Inc.* 424 U.S. 554, 570-571 (1976), the Court concluded that employees have a

substantial burden in a fair representation case. "To prevail against either the company of the union, [employees] must show not only that their discharge was contrary to the contract but must also carry the burden of demonstrating breach of duty of the Union." Where employees are legally barred from attacking the arbitration award they cannot meet this dual burden of proof. The employer *and* the union are entitled to treat the arbitration award as dispositive of the underlying grievance when the grievant fails to file a timely action to vacate the award. *United Air Lines, Inc. v. Evans*, 431 U.S. 553, 558 (1977). Because the "'relatively rapid disposition of labor disputes'" is "one of the leading federal policies in this area" (*United Parcel Service, Inc. v. Mitchell, supra*, ___ U.S. at ___, quoting *Hoosier Cardinal, supra*, 383 U.S. at 707), the public policy considerations prompting the selection of a short statute of limitations in actions against employers apply with equal force to actions against unions.

More importantly, this Court's analysis of the proper remedies in fair representation suits demonstrates the futility of allowing an action against a union when the action against the employer is barred by the statute of limitations. In *Vaca v. Sipes*, 386, U.S. 171, 197 (1967), the Court held that a union which breaches its duty of fair representation is not liable for damages attributable solely to the employer's breach of contract. The Court then established what has become the guideline for awarding damages in fair representation suits (*Id.* at 197-198):

> The governing principle, then, is to apportion liability between the employer and the union according to the damage caused by the fault of each. Thus, damages attributable solely to the employer's breach of contract should not be charged to the union, but increases if any in those damages caused by the union's refusal to process the grievance should not be charged to the employer.

Applying that standard to the case before it, the Court concluded (*Id.* at 198):

> In this case, even if the Union had breached its duty, all or almost all of Owens' damages would still be attributable to his allegedly wrongful discharge by Swift. For these reasons, even if the Union here had properly been found liable for a breach of duty, it is clear that the damage award was improper.

The court next reviewed the issue of a union's liability in the fair representation context in *Czosek v. O'Mara*, 397 U.S. 25 (1970). In affirming the dismissal of a complaint against the employer absent allegations implicating it in the union's alleged breach of the duty of fair representation, the Court observed (*Id.* at 29):

> The Court of Appeals permitted the railroad to be made a party to the suit if it is properly alleged that the discharge was a consequence of the union's discriminatory conduct or that the employer was in any other way implicated in the union's alleged discriminatory action. If these allegations are not made and the employer is not a party defendant, judgement against [the unions] can in any event be had only for those damages that flowed from their own conduct. *Assuming a wrongful discharge by the employer* independent of any discriminatory conduct by the union and a subsequent discriminatory refusal by the union to process grievances based on the discharge, *damages against the union for loss of employment are unrecoverable except to the extent that its refusal to handle the grievances added to the difficulty and expense of collecting from the employer.* If both the union and the employer have independently caused

> damage to employees, the union cannot complain if separate actions are brought against it and the employer for the portion of the total damages caused by each. (emphasis supplied.)

The courts of appeals have applied this analysis to limit the union's liability in a hybrid action against both union and employer to the employees' costs in obtaining a fair hearing of his grievance against the employer. *See, e.g., Milstead v. Teamsters Local 957*, 649 F.2d 395, 396 (6th Cir. 1981); *Bowen v. United States Postal Service*, 642 F.2d 79, 82 (4th Cir. 1981); *Butler v. Teamsters Local 823*, 514 F.2d 442, 447 (8th Cir. 1975), *cert denied*, 423 U.S. 924 (1975); *de Arroyo v. Sindicato de Trabajadores Packinghouse*, 425 F.2d 281, 290 (1st Cir. 1970), *cert denied*, 400 U.S. 877 (1970). *See also NLRB v. Electrical Workers Local 485*, 454 F.2d 17, 23 (2d Cir. 1972); Feller, ***A General Theory of the Collective Bargaining Agreement*, 61 Cal. L.Rev.** 663, 819 (1973).

Where the employees are themselves responsible for their inability to demonstrate a breach of contract, thereby precluding any effective remedy for the breach, the employees gain nothing in an action against the union. They cannot obtain a fair hearing on their underlying grievance against the company. They cannot obtain reinstatement or backpay. Nor can they obtain punitive damages from the union. *IBEW v. Foust*, 442 U.S. 42 (1979).

Certiorari is necessary, therefore, to assess whether employees barred by the statute of limitations from attacking an arbitration award should also be barred from suing the union for breach of the duty of fair representation.

II. THE CROSS-PETITION ADDRESSES A MAJOR QUESTION OF LABOR LAW LEFT UNRESOLVED BY THE COURT'S RECENT *ITT GILFILLAN* DECISION.

Assuming, *arguendo*, that an employee can pursue a fair representation action against his union despite the statute

of limitations which bars an action to vacate an arbitration award, the Court must consider whether the employee must exhaust his internal union remedies. In *Clayton v. UAW [ITT Gilfillan]*, ___ U.S. ___ (1981), the Court held that an employee need not exhaust his internal union remedies where those remedies are insufficient to provide full relief, including the reactivation of a grievance wrongfully withdrawn from arbitration. The Court also suggested that exhaustion might be required where the member had chosen to sue only the union. Where, as here, the employer is not, and cannot be, a party to the action and where the arbitral resolution of the grievance cannot be challenged, the only judicial remedy against the union is monetary. Where a union's internal grievance procedure is capable of awarding monetary relief, a union member should be required to exhaust his internal union remedies prior to seeking judicial relief.

Certiorari is necessary, therefore, to resolve this procedural issue which will become increasingly significant after *United Parcel Service v. Mitchell.*

CONCLUSION

For the reasons stated herein, we respectfully urge the Court to grant a Writ of Certiorari in this case if it grants a Writ in Case No. 81-314.

JONATHAN G. AXELROD
(Counsel of Record)
HUGH J. BEINS

Beins, Axelrod & Osborne, P.C.
1511 K Street, N.W., Suite 300
Washington, D.C. 20005
(202) 638-4620

Attorneys for Cross-Petitioner,
Eastern Conference of Teamsters

September 8, 1981

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79-1625

RONALD SINE and
LARRY DANNER

Appellants

v.

LOCAL NO. 992 INTERNATIONAL
BROTHERHOOD OF TEAMSTERS;
EASTERN CONFERENCE OF TEAMSTERS;
and MITCHELL TRANSPORT, INC.

Appellees

FILED
MAY 12, 1981

U.S. Court of Appeals
Fourth Circuit

ORDER

The case of *United Parcel Service v. Mitchell*, No. 80-169, 49 L.W. 4378 (April 20, 1981), having been decided, and being of opinion the petition for rehearing in this case is without merit,

It is accordingly ADJUDGED and ORDERED that the petition for rehearing, together with its supplement, shall be, and the same hereby is, denied.

With the concurrences of Judge Haynsworth and Judge Hoffman.

For the Court

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79-1625

RONALD SINE and
LARRY DANNER

Appellants

v.

LOCAL NO. 992 INTERNATIONAL
BROTHERHOOD OF TEAMSTERS;
EASTERN CONFERENCE OF TEAMSTERS;
and MITCHELL TRANSPORT, INC.

Appellees

Appeal from the United States District Court for the District of Maryland, at Baltimore. Joseph H. Young, District Judge.

Argued June 3, 1980 Decided March 24, 1981

Before HAYNSWORTH, Chief Judge, WIDENER, Circuit Judge, and HOFFMAN, Senior District Judge.*

Harry Goldman, Jr., for Appellant; Jonathan G. Axelrod (Hugh J. Beins, on brief) for Appellees Eastern Conference of Teamsters; Roger D. Susanin (Alfred J. D'Angelo, Cunniff, Bray & McAleese, on brief) for Appellees Mitchell Transport, Inc.; (Thomas H. Kohn, on brief) for Appellees Teamsters Local 992.

*United States District Court for the Eastern District of Virginia.

WIDENER, Circuit Judge:

This controversy comes before us for a second time. The plaintiffs, Ronald Sine and Larry Danner, have brought suit under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, and the United States Arbitration Act, 9 U.S.C. § 1 et seq, against their employer, Mitchell Transport, Inc. (Mitchell or Company), Local 992 of the International Brotherhood of Teamsters (Local), and the Eastern Conference of Teamsters (Conference). Sine and Danner are seeking to vacate an arbitration decision denying their claims for back pay against the Company. Additionally, they allege that the Unions breached their duty of fair representation in not properly or adequately advancing their claims against Mitchell. From summary judgement for the defendents, plaintiffs appeal. We affirm the district court's denial of the claim to vacate the arbitration award, but vacate the summary judgement on the claims for breach of the duty of fair representation and remand that matter to the district court for further consideration.

The facts surrounding this dispute are somewhat involved and thus require a rather detailed account. Mitchell is an interstate common carrier, engaged primarily in hauling cement. It maintains a number of terminals throughout the

United States, only two of which are pertinent here, one in Union Bridge, Maryland and another in Baltimore.[1]

In the spring of 1971, Mitchell transferred seven of the twelve tractors at the Baltimore facility to Union Bridge because of a change in customer demands. The transfer meant a loss of job opportunities at Baltimore and increased the work available at Union Bridge. The Company posted what is called a "sign-up bid" list at Baltimore, which allowed the Baltimore drivers to volunteer to transfer to Union Bridge. The transfer called for terminal seniority for purposes of dispatch but company seniority whenever layoffs occurred. Five of the Baltimore drivers, including the present plaintiffs, signed the list and transferred to Union Bridge. They were placed at the bottom of the driver seniority list for job selection at Union Bridge in accordance with § 5.7 of the Eastern Area Cement Haul Agreement,[2] the collective bargaining agreement.

---

1. The Baltimore terminal is no longer operational.

2. Section 5.7 of the collective bargaining agreements, from March 1, 1974 through February 28, 1977, provided in pertinent part:

> (b) Closing of branches, terminals, divisions or operations:
>
> • • • • •
>
> (2) ...Such employee, however, shall go to the bottom of the seniority board and shall have the right of job selection only in accordance with the seniority at such terminal. However, he shall exercise his Company seniority for layoff purposes and other contract benefits.

Effective March 1, 1977, § 5.7 was changed to provide for virtually complete dovetailing of seniority rosters:

> (b) Closing of branches, terminals, divisions or operations
>
> • • • • •
>
> (2) ...Such employee, however, shall be dovetailed in accordance with procedures outlined in Article 5, Section 5.5

Section 5.5 calls for dovetailing of the active rosters and dovetailing of the inactive rosters. When someone moves from inactive to active, he is dovetailed into the active roster with full company seniority.

During the summer of 1971, a dispute arose at Union Bridge regarding the seniority of the newly transferred drivers from Baltimore. The original Union Bridge drivers objected to the floating seniority of the transferees, who could exercise their company seniority whenever they were laid off.[3] As a result of that dispute, the Local 992 union steward at the terminal, hoping to clear up the situation, filed a grievance with the Union. The grievance, which noted that two high seniority and three low seniority Baltimore drivers had transferred to Union Bridge, asserted that the original Union Bridge drivers were being denied their full working opportunities. It requested that all five drivers be returned to Baltimore because work was available for them there.

The grievance was heard before the Eastern Area Tank and Cement Haul Joint Committee, an arbitration panel established by the collective bargaining agreement, whose decisions, according to the agreement, are final and binding.[4] The Joint Committee, in Case No. 839, determined that only those employees who were forced to transfer to

---

3. A Company representative had interpreted § 5.7 to mean that once a transferee driver had not worked on a consecutive Thursday, Friday, and Saturday, that represented a layoff for purposes of the contract and he could then exercise his Company seniority and thus work where an old Union Bridge employee with greater terminal seniority, but less company seniority, would not work. Because of that interpretation, a number of the original Union Bridge drivers, in order to protect their seniority, stayed out of work on a Thursday to prevent the Baltimore drivers from obtaining layoff status because the Company was forced to depend on the Baltimore drivers in the absence of the Union Bridge drivers who had stayed out.

4. The Joint Committee consists of three (or other equal number of) representatives of the Company and three of the Union. A majority of the Committee is required to rule on a grievance; in the event of a deadlock, the grievance is submitted to an impartial arbitrator, whose decision is also final and binding. See §§ 7.3 and 7.5 of the collective bargaining agreement.

Union Bridge because of a loss of work at Baltimore were entitled to exercise floating seniority. Thus, the decision upheld only the right of the three junior drivers to transfer to Union Bridge, which group included the present plaintiffs. The decision required the Company to repost a list at Baltimore and required the senior drivers to return to Baltimore at the soonest practical opportunity.

In October 1971, the five former Baltimore drivers had meetings with representatives of the Company and the Union. The original Union Bridge drivers wanted all the Baltimore drivers to return to Baltimore; none of the Baltimore drivers, however, wanted to return. In the end, each of the Baltimore drivers, including the plaintiffs Sine and Danner, signed a letter in which he agreed to accept terminal rather than company seniority, except for fringe benefits, in return for the right to remain at Union Bridge.

Some six months later, around May of 1972, Sine and Danner were both laid off. Subsequently, both filed grievances requesting company seniority for purposes of layoffs, and the dispute was brought before the Joint Committee as Case No. 1007. The plaintiffs argued that the letter they had signed forfeiting their entitlement to floating seniority was null and void.[5] The Committee, however, rejected their contention; "Based upon the facts presented including the letter dated November 10, 1971, which was executed by the parties, the grievance is denied."

Following that decision, Sine and Danner, in July 1973, brought suit in the District of Maryland against the Local and the Company, seeking damages and injunctive relief restoring their company seniority. On June 6, 1975, the jury

---

5. They argued it was null and void pursuant to § 6.2 of the collective bargaining agreement:

> The Employer agrees not to enter into any agreement or contract with his employees, individually or collectively, which in any way conflicts with the terms and provisions of this Agreement. Any such agreement shall be null and void.

returned a verdict in favor of the the plaintiffs against both defendants and awarded Sine $14,000 and Danner $11,000 in damages. With regard to the claim for injunctive relief, however, the court, in a letter dated October 29, 1975, advised that it was denying the plaintiffs' claim:

> After reviewing the instructions, the evidence, and the pretrial order I find nothing in the jury's verdict that would require or justify the issuance of injunctive relief as requested by the plaintiffs. The actions of the parties are controlled by various union agreements and those agreements set forth the procedures to be followed in enforcing the rights of all parties. This enforcement neither requires nor justifies Court intervention based upon the jury's verdict.

The court filed a formal order denying injunctive relief on October 31, 1975.

In July 1975, prior to the court's denial of the requested injunctive relief, Sine and Danner once again filed grievances asking for their rightful company seniority and back pay from June 6, 1975, the date of the jury verdict. These grievances were heard together before the Joint Committee as Case No. 1384. The Union's attorney assisting Sine and Danner contended that not only was the letter null and void as an extra-contractual agreement, but also that the grievants were never aware of Case No. 839, and that fact negated the letter. The Committee, however, in its decision issued in November 1975, denied the grievance with respect to both the seniority rights and back pay.[6] Sine and Danner made no attempt to vacate that decision of the Joint Committee.

---

6. "Based upon the facts presented with respect to the grievants' claim for back pay including interest, the grievance is denied. "Based upon the facts presented with respect to the grievants' claim for seniority rights, the grievance is denied."

On December 3, 1975, the Local signed a consent order in which it agreed to observe the company seniority of the plaintiffs for daily dispatch purposes. The Company was not a party to that order which was entered by the district court.

On March 10, 1977, this court, in an unpublished opinion, affirmed the plaintiffs' jury verdict against the Company and the Local. We held:

> There is sufficient evidence in this case to support the jury's verdict and to show both a breach of the collective bargaining agreement by Mitchell and unfair representation of Sine and Danner by the Union.
>
> The letter signed by the Baltimore drivers did not operate as a waiver because a waiver is an intentional relinquishment of a known right. Here, there is a firm basis for a finding by the jury that Sine and Danner were not adequately informed of their rights, and, hence, under accepted principles of contract law, did not waive their rights.

Sine v. Mitchell Transport, Inc., No. 76-1201 (4th Cir. March 10, 1977), at 4-5.

Shortly after this court's affirmance of the jury's award, Sine and Danner again filed a grievance seeking back pay and seniority. This grievance went before the Joint Committee as Case No. 1524, and the Committee this time deadlocked on the vote, thus sending the matter to arbitration pursuant to the applicable provisions of the collective bargaining agreement.[7]

---

7. See Note 4 supra. The plaintiffs also contended that the Union representatives on the Committee voted to deadlock only because of a threatening letter sent to the Committee by the plaintiffs' counsel.

The arbitrator held, contrary to the jury's determination and contrary to that of this court, that Sine and Danner waived their rights to company seniority when they signed the letter. He thus denied the grievance with regard to the claim for back pay. However, with regard to the claim for seniority, the arbitrator upheld the grievance for equitable reasons and directed that Sine and Danner be dovetailed into the roster at Union Bridge in accordance with their company seniority. (The collective bargaining agreement which became effective on March 1, 1977 had altered the transfer policy and provided for complete dovetailing of rosters whenever there was a transfer of work from one terminal to another.) Because the Baltimore terminal had been closed and the newly transferred drivers with less company seniority would bump Sine and Danner, the arbitrator decided that the plaintiffs should be granted full seniority rights. The arbitrator issued his decision on August 22, 1978, and it was received at the Eastern Conference of Teamsters on August 24, 1978.

Still dissatisfied, Sine and Danner filed this suit under the Labor Management Relations Act and the United States Arbitration Act against the Company, the Local, and the Conference. The plaintiffs sought to vacate the arbitrator's award on the theory that the earlier jury verdict and this court's affirmance of the award should be accorded *res judicata* effect and thus require a finding that they receive back pay. They also contended that the Unions breached their duty of fair representation, alleging that the Unions did not present a thorough case, that the Unions failed to urge the arbitrator to render a more expeditious decision, and that the Unions were responsible for the delay in the resolution of the dispute. On cross motions for summary judgment, the district court granted the defendants' motions and denied the plaintiffs'. The court rejected the plaintiffs' contention that its prior determination be given *res judicata* effect. The court granted the Company's motion on the ground that the plaintiffs' claim was barred by the appropriate statute of limitations found in the Uniform

Arbitration Act effective in Maryland, Md. Code Ann. § 3-201 *et seq*, which provides for a thirty day period to set aside an award. Finally, the court granted the Union's motions, saying that the plaintiffs' claims were groundless and had been discredited in the plaintiffs' own words.[8] This appeal followed.

The first issue for consideration is whether the plaintiffs' claim against the defendant Mitchell is barred, as the district court held, by the thirty day limitations' period provided for in the Maryland Uniform Arbitration Act. The plaintiffs brought this action to vacate the arbitrator's award under the United States Arbitration Act and § 301 of the LMRA, 29 U.S.C. § 185.[9] The United States Arbitration Act provides for a three month limitations' period for a suit to vacate or modify an arbitration award. 9 U.S.C. § 12. However, the act also expressly states that it is inapplicable to actions concerning contracts of employment of workers engaged in interstate commerce, 9 U.S.C § 1, and this court has held that the exclusionary provision applies in cases such as the one before us here. *United Electrical Radio & Machine Workers of America v. Miller Metal Products, Inc.*, 215 F2d 221 (4th Cir. 1954); *International Union United*

---

8. Because of the manner in which it disposed of the case, the district court did not pass upon other defenses urged by the Unions or the Company, as we do not. Of course, those applicable to the Unions may be considered on remand.

9. The plaintiffs' claim of jurisdiction under the United States Arbitration Act, 9 U.S.C. § 1 et seq, is not well taken. This statute does not furnish jurisdiction; rather, it requires an independent base for it. 9 U.S.C. § 4 provides for relief in a district court which "would have jurisdiction under Title 28" "save for such [arbitration] agreement," and this provision had been correctly literally construed. E.g. *Commercial Metals Co. v. Balfour, Guthrie, & Co. Ltd.*, 577 F2d 264 (5th Cir. 1978); *Metro Industrial Parking Corp. v. Terminal Const. Co.*, 287 F2d 382 (2d Cir. 1961). Nevertheless, we reach the merits of the applicability of the United States Arbitration Act, for the district court "save for...[the arbitration] agreement" had jurisdiction under 29 U.S.C. § 185(a).

Furniture Workers of America v. Colonial Hardwood Floor Co., 168 F2d 33 (4th Cir. 1948). Mitchell is an interstate carrier, and this dispute concerns the collective bargaining agreement. Thus, the United States Arbitration Act and its three month statute of limitations has no direct application in this case.

Although some courts have looked to the limitations' period provided for in the United States Arbitration Act for actions to vacate an arbitration award, see e.g., *Communication Workers of America v. Pacific Telephone & Telegraph Co.*, 462 F.Supp. 736 (C.D. Cal. 1978), others have looked to State law for the appropriate limitations' period. See, e.g. *Wallace v. American Telephone and Telegraph Co.*, 460 F.Supp. 755 (E.D. N.Y. 1978). *International Union (UAW) v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966), requires us to look to State law for determination of the limitations' period for a claim under 29 U.S.C. § 185. Additionally, we are required under *Campbell v. City of Haverhill*, 155 U.S. 610 (1895), to follow the Rules of Decision Act, 28 U.S.C. § 1652, in determining which statute of limitations to apply. Under that statute the "laws of the several states, except where...Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States..." In this case Congress has not provided for a limitations' period for action under § 301 to vacate an arbitration award, and has specifically excluded the application of the United States Arbitration Act to actions concerning such collective bargaining agreements. Thus, given that Congress has not provided otherwise, we look to the law of Maryland to determine the appropriate limitations' period.

The State statute of limitations to be selected is determined by characterizing the nature of the § 301 suit. *Hoosier Cardinal*, supra. Because this action against the Company is one which requires the vacation of an arbitrator's award, we characterize the suit as one to vacate an award and look to the applicable arbitration statute of

the State for limitations of the action. E.g. *Barbarino v. Anchor Motor Freight, Inc.*, 421 F.Supp. 1003, 1006 (W.D. N.Y. 1976), and cases there cited; *Wallace*, supra, and cases there cited. This holding gives effect to the national labor policy of deciding labor disputes by arbitration if possible. *Steelworkers v. Warrior & Gulf Co.*, 363 U.S. 574 (1960).

Section 3-224 of the Maryland Code Annotated provides for a thirty day limitations' period:

> (a) Petition - (1) Except as provided in paragraph (2), a petition to vacate the award shall be filed within 30 days after delivery of a copy of the award to the petitioner.
>
> (2) If a petition alleges corruption, fraud, or other undue means it shall be filed within 30 days after the grounds become known or should have been known to the petitioner.[10]

The award here was issued on August 22, 1978, and the Local's attorney forwarded a copy of the opinion and award to the plaintiffs' counsel on August 24, 1978. The district court found that the plaintiffs became aware of the outcome no later than September 1, 1978, and the plaintiffs do not challenge that finding on appeal. Plaintiffs filed the present action on November 20, 1978, which is more than thirty days after they received the award; thus, the action is untimely under Md. Code. Ann. § 3-224(a)(1).

Although the plaintiffs allege that the arbitrator's decision was "tainted with corruption," they do not contend that they filed this action within thirty days of learning of

---

10. There is no merit to plaintiffs' argument that *Howard v. Aluminum Workers International Union*, 589 F2d 771 (4th Cir. 1978), requires a three year limitations' period be applied here for actions based upon tort. That case did not involve the vacation of an arbitration award. Rather, it was only a § 301 action against a union for a breach of the duty of fair representation.

the alleged corruption; indeed, the record would not support such a contention.[11] Thus, they cannot come within § 3-224(a)(2) of the Maryland Act in order to avoid the bar of the thirty days' limitation period even if fraud was involved as alleged (but which is not shown by the present record).

Because the claim is barred by the statute of limitations, we need not consider the plaintiffs' argument that the earlier decisions of the district court and this court should be given *res judicata* effect.

We now consider whether the district court erred when it granted summary judgment against the plaintiffs on their claim against the union for breach of the duty of fair representation. In their complaint, the plaintiffs alleged that the breach consisted of, among other things,

> hindering, delaying and postponing the plaintiffs' Grievance Procedures at each and every stage, and, only after threat of suit from plaintiffs' private attorney, grudgingly years late, deadlocking the final step of the Grievance procedure

---

11. See Sine's deposition testimony:
    Q. ...I want to know when in your own mind you reached the decision that the arbitrator is corrupt?
    A. After I got the decision.
    Q. Okay. Now, how much after.
    A. When I got it.
    Q. When you got...
    A. Yes.
    Q. ...and read it, you reached that conclusion...
    A. Right.
    Q. ...correct?
    A. Right. When we got the reason for not giving it.

    See also Danner's deposition testimony:
    MR. GOLDMAN: Go ahead. When did you reach a conclusion that the arbitrator was corrupt after you got the decision?
    THE WITNESS: After I got the decision or read it. I felt...
    BY MR. SUSANIN:
    Q. As soon as you became aware of the decision?
    A. Yes. I would say that there.

> before Arbitration, so as to require said Arbitrator, who was either incompetent or corrupt, or both, was mal-selected by the parties, failing to advance and argue the simple and legal, factual premises from the trial record, prayers and instruction, court charge, briefs of the parties, record on Appeal and Opinion, in the United States Court of Appeals for the Fourth Circuit, waiving and permitting the delay of his Decision for 10 months and 22 days, so that the amount of back pay which the Arbitrator should have awarded to the employees, would have made an Award of back pay even more costly, from which the Arbitrator obviously shrank, and other breaches of the aforesaid Union's duty of fair representation, were by it committed.

The district court stated that the essence of the plaintiffs' claim against the Union was that the "Local 992's attorney did not present a 'thorough' case, that the Union failed to urge the Arbitrator to render a more expeditious decision, and that the Union was somehow responsible for the lengthy delay in the issuance of the arbitrator's final decision." The court did not detail the evidence but held that many of the plaintiffs' allegations were totally groundless, as well they may have been, based on what it described as a detailed and thorough refutation by the defendants and by the plaintiffs' own words. The other allegations, the court held, did not amount to arbitrary or discriminatory behavior by the attorney or any dishonest conduct on the part of the Union. The district court thus granted the defendants' motion for summary judgment on the breach of duty claim.

The plaintiffs have raised a number of factual allegations, and some of the facts we are now asked to consider might arguably have been considered by the district court to prove that the Union's conduct was arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 191 (1967). While the district court did relate a few of the facts in part, we are

unable to ascertain from its opinion just what facts it relied upon for determining that the plaintiffs' claim against the Unions was without merit. We feel that this is a case where the district court did not undertake a critical review of the relevant facts so as to give support to its conclusory findings. *Lewis v. Tobacco Workers' International Union*, 577 F2d 1135, 1146 (4th Cir. 1978). Accordingly, the judgment of the district court with respect to the § 301 claim against the unions for breach of the duty of fair representation is vacated and remanded for reconsideration by the district court.[12] On remand, the district court may consider the case on the record before it, or may, within its discretion, consider further factual development if it be so advised.

AFFIRMED IN PART,
VACATED AND REMANDED
IN PART.

---

12. The district court, because it determined that the plaintiffs' claim for breach of the duty of fair representation was without merit, did not decide whether the Conference, independently of the Local, owed such a duty to the plaintiffs. On remand, if the court should determine that the plaintiffs' claim does have merit, it should also consider whether the plaintiffs may seek recovery from both the Local and the Conference.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

RONALD SINE, et al. *

v. * CIVIL NO. Y-78-2315

LOCAL NO. 992 INTERNATIONAL *
BROTHERHOOD OF TEAMSTERS, *
et al. *

Filed: August 28, 1979

Harry Goldman, Jr., Esquire, Baltimore, Maryland, counsel for plaintiffs.

Thomas H. Kohn, Esquire, Bethesda, Maryland, counsel for defendant Local No. 992.

Hugh J. Beins, Esquire, Bethesda, Maryland, counsel for defendant Eastern Conference of Teamsters.

Roger D. Susanin, Esquire, Alfred J. D'Angelo, Jr., Esquire, Bala Cynwyd, Pennsylvania, and Jeffrey Rockman, Esquire, Baltimore, Maryland, counsel for defendant Mitchell Transport, Inc.

Young, United States District Judge

I. THE FACTS

Plaintiffs Ronald Sine and Larry Danner have brought this action under section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a), and the provisions of the Federal Arbitration Act, 9 U.S.C. § 1, in an effort to vacate an arbitration award. The present action relates to an earlier case filed in 1973 in which plaintiffs received a jury award of $25,000.00 as a result of a suit

brought against Local Union No. 992, International Brotherhood of Teamsters ("Union" or "Local 992"), and Mitchell Transport, Inc. ("Mitchell").

Plaintiffs are driver employees of Mitchell, an interstate motor carrier. They alleged that defendant Mitchell, in violation of their collective bargaining agreement, denied them proper seniority positions for dispatch purposes. They also contended that the Union breached its duty of fair representation in not properly or adequately advancing their arguments against Mitchell. As a result, Sine and Danner filed suit in this Court against Mitchell and the Union, Civil Action No. 73-724-Y (D. Md. 1975), in which they sought both monetary as well as injunctive relief granting them their seniority positions.

On June 6, 1975 a jury awarded the plaintiffs $25,000.00 in damages. By letter dated October 29, 1975, however, the Court advised the parties that in light of the jury's verdict, injunctive relief would be unnecessary since "[t]he actions of the parties are controlled by various union agreements and those agreements set forth the procedures to be followed in enforcing the rights of all parties." Letter dated October 29, 1975. The Court issued an appropriate Order denying plaintiffs' seniority request on October 31, 1975.

After the verdict but prior to the October 31, 1975 Order, plaintiffs filed two additional grievances on June 30, 1975 and July 31, 1975 seeking restoration of their seniority plus back pay from June 6, 1975 to the date of the grievance. After processing, these two grievances were presented to the Joint Area Committee as case no. 1384.

The Union provided plaintiffs with an attorney from the Eastern Conference of Teamsters, and their case was heard by the Eastern Area Tank and Cement Haul Joint Committee ("JAC") on November 19, 1975. The JAC decision denied the claim for seniority and the claim for back pay. Under the terms of the collective bargaining agreement this decision was binding and was so recognized by plaintiff

Sine. *See* Sine Deposition at 208-09. Neither plaintiff tried to appeal or vacate the JAC decision in case no. 1384.

On May 14, 1976 the Fourth Circuit Court of Appeals denied plaintiffs' cross appeal of this Court's denial of their seniority positions. Several months later, on March 10, 1977, the Fourth Circuit affirmed the jury's $25,000.00 damage award.

Undaunted in their efforts to obtain their seniority positions, plaintiffs filed an identical grievance on April 13, 1977. *See* Sine Deposition at 204. Designated as case no. 1524, this case was heard by the JAC on May 24, 1977. While no new factual matters were presented, plaintiffs did submit a letter from their attorney who threatened to sue each JAC member unless the case was deadlocked and sent to arbitration.[1] The JAC did become deadlocked, and both plaintiffs indicated that they believed their attorney's letter was a crucial reason for this result. *See* Sine Deposition at 212-13; Danner Deposition at 503-04.

Mitchell and the Union then utilized the Federal Mediation and Conciliation Service to select arbitrator Jay Kramer, Esquire, on or about June 17, 1977. Kramer was a former Chairman of the New York State Labor Relations Board. Case no. 1524 was heard on October 3, 1977, and Arbitrator Kramer issued his decision on August 22, 1978. The arbitrator had denied plaintiffs' back pay claim but granted their requested seniority change based upon an intervening change in the relevant provisions of the collective bargaining agreement. As a result of this decision, plaintiffs filed this action on November 20, 1978 in an attempt to vacate only that part of the arbitrator's award denying their back pay claim.

The case is presently before this Court on cross motions for summary judgment. Plaintiffs seek partial summary

---

1. A deadlock results when the Union representatives of the panel vote in favor of the grievance and the company representatives vote against it.

judgment vacating the arbitrator's award denying damages on the novel theory that this Court's initial decision after the jury's verdict should be accorded res judicata effect insofar as the present action is concerned. Defendants seek summary judgment on two grounds. First, they contend that the appropriate statute of limitations mandates dismissal of plaintiffs' complaint. Second, they argue that the Union did not, as a matter of law, breach its duty of fair representation to plaintiffs.

II. RES JUDICATA

If ever a case were litigated beyond the point of all practical utility, this case constitutes a prime example. In denying plaintiffs' request for injunctive relief over four years ago, this Court clearly indicated that the monetary damages awarded by the jury were to constitute the exclusive remedy obtained from this forum. Now, having had several additional bites at the same apple by filing grievances subsequent to the jury's award, plaintiffs seek to present their case before this Court yet again. While noting plaintiffs' dogged perseverance, this Court has a duty both to litigants and society to bring litigation to a halt when enough is too much. *See, e.g. Todd Shipyards Corp. v. Industrial Union of Marine and Shipbuilding Workers of America, Local 15, AFL-CIO,* 242 F. Supp. 606, 610-11 (D. N.J. 1965).

One jury verdict, two grievances, and one partly successful arbitration later, plaintiffs have returned to this Court to obtain what Arbitrator Kramer denied them. Having already used the arbitration route to obtain the injunctive remedy denied them in this Court, plaintiffs without hesitation seek to turn a denial of injunctive relief into a binding award of back pay for a one month period subsequent to the jury's award of $25,000.00. While res judicata may be a mystery to some, it surely does not operate through the vehicle of the *non sequitur.*

In denying plaintiffs' request for injunctive relief the Court did nothing more than that. It expressed no opinion

as to any award of back pay - an issue which arose after the original trial had been concluded. Having persisted long enough to win injunctive relief from Arbitrator Kramer, plaintiffs now refer to that same arbitrator's decision as a "completely lawless interpretation of the facts and law" which "flounted" what plaintiffs claim was finally put to rest by this Court.

The principles of res judicata may not be applied so as to allow a party to play both ends against the middle. What they could not obtain from this Court, plaintiffs got through arbitration, and what they could not win through arbitration, they now seek to recover in this forum. This Court's earlier ruling denied plaintiffs injunctive relief so as to permit further grievance proceedings *de novo* to decide their seniority complaints. The arbitration award resulted from that *de novo* procedure, and this Court's ruling obviously cannot be given res judicata effect in the present litigation.

III. STATUTE OF LIMITATIONS

Defendants seek to dismiss plaintiffs' complaint on the grounds that since it constitutes an action to vacate an arbitration award it must have been filed within thirty days of the decision as required by the Maryland Uniform Arbitration Act, MD. CTS. & JUD. PROC. CODE ANN. § 3-201 *et seq.* Plaintiffs contend that the appropriate limitations period is the ninety day period permitted under the U.S. Arbitration Act, 9 U.S.C. § 12. Arbitrator Kramer rendered his decision on August 22, 1978, and plaintiffs became aware of the outcome no later that September 1, 1978. Sine Deposition at 219, 220. The present case was instituted on November 20, 1978.

Plaintiffs have brought this case under Section 301 of the LMRA, 29 U.S.C. § 185(a) and the provisions of the Federal Arbitration Act, 9 U.S.C.§ 1. The latter act, however, expressly states that it is inapplicable to actions brought concerning collective bargaining agreements covering workers

engaged in interstate commerce. *See United Electrical R & M Workers v. Miller Metal Products,* 215 F.2d 221 (4th Cir. 1954); *International Union United Furniture Workers of America v. Colonial Hardwood Flooring Co.,* 168 F.2d 33 (4th Cir. 1948). Defendant Mitchell is an interstate carrier, making the Federal Arbitration Act irrelevant.

Under the remaining basis for jurisdiction, 29 U.S.C. § 185(a), the appropriate statute of limitations must be that contained in the Maryland Uniform Arbitration Act since there are no express limitations in the LMRA on bringing a section 301 action. Federal common law therefore directs the that the analogous state limitations period be adopted and applied. *United Auto Workers v. Hoosier Cardinal Corp.,* 383 U.S. 696 (1966). Section 3-224 of the Maryland Uniform Arbitration Act provides a thirty day limitations period for actions seeking to vacate an arbitrator's award. Since plaintiffs brought the present case beyond the limitations period, it is clearly untimely.

IV. FAIR REPRESENTATION

Plaintiffs also submit that Local 992 breached its duty of fair representation in handling their claims during the grievance and arbitration process. They now contend that Local 992's attorney did not present a "thorough" case, that the Union failed to urge the arbitrator to render a more expeditious decision, and that the Union was somehow responsible for the lengthy delay in the issuance of the arbitrator's final decision. Taken together, these allegations purport to establish that Local 992 represented plaintiffs' interests in an arbitrary, discriminatory, and bad faith manner in violation of the standards set forth in *Hines v. Anchor Motor Freight,* 424 U.S. 554 (1976); and *Vaca v. Sipes,* 386 U.S. 171 (1967).

Counsel for Local 992 as well as for Mitchell have prepared a detailed and thorough refutation of plaintiffs'

claims, and the Court is satisfied that they are totally groundless. Both Local 992 and Mitchell have documented repeated instances either in plaintiffs' own depositions or in the transcripts from prior proceedings involving these parties where the allegations have been totally discredited in plaintiffs' own words. Such behavior clearly undermines plaintiffs' claims of inadequate representation. *Hardee v. North Carolina Allstate Services, Inc.*, 537 F.2d 1255, 1259 (4th Cir. 1976). While other allegations seek to challenge attorney tactics, there is nothing in these claims amounting to arbitrary or discriminatory behavior by the attorney or any fraudulent, deceitful, or otherwise dishonest conduct on the part of the union. *Griffin v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW*, 469 F.2d 181 (4th Cir. 1972); *Walden v. Local 71, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 468 F.2d 196 (4th Cir. 1972).

Since this case may be fully disposed of for the reasons already supplied, the Court declines comment on defendant Mitchell's contention that plaintiffs' grievances which resulted in the Kramer award were never arbitrable because of the previous JAC decision in case number 1384. Mitchell never sought to vacate the Kramer award, and this Court is content to put matters completely to rest by preventing plaintiffs from themselves vacating that part of Kramer's award which denied them back pay.

Accordingly, it is this 28th day of August, 1979, by the United States District Court for the District of Maryland, ORDERED:

1. That plaintiffs' motion for partial summary judgment be, an the same is, hereby DENIED; and
2. That all defendants' motions for summary judgment be, and the same are, hereby GRANTED.

Joseph H. Young
UNITED STATES DISTRICT JUDGE

Office - Supreme Court, U.S.
FILED
OCT 16 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-475

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

EASTERN CONFERENCE OF TEAMSTERS,

Cross-Petitioner,

versus

RONALD SINE AND LARRY DANNER,

Cross-Respondents.

BRIEF IN OPPOSITION

HARRY GOLDMAN, JR.
RICHARD P. NEUWORTH

1123 Munsey Building
Calvert & Fayette Street
Baltimore, Maryland 21202
(301) 837-4222

Counsel for
Cross-Respondents and
Petitioners in No. 81-314

COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW

Is not the Judgment of the United States Court of Appeals in Case No. 76-1201, 1202 binding on the parties so as to establish a breach of contract by the employer under the principle of res judicata.

TABLE OF CONTENTS

Page

COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW.. i

STATEMENT OF THE CASE..... 1

SUMMARY OF ARGUMENT..... 5

I. The Union's Contention that Employees Have No Claim Against the Union Once The Suit Against the Employer Is Time Barred Is Incorrect 5

II. The Defense Concerning Exhaustion of Internal Union Procedures Is Not Available to the Union in this Case.... 6

III. Whether this Action Proceeds Against the Union Alone or the Union and the Employer, this Court Should Rule that the Decision in Case No. 76-1201 Establishes A Breach of the Collective Bargaining Agreement Binding on the Parties Under the Principal of Res Judicata 6

ARGUMENT 6

CONCLUSION..... 11

TABLE OF AUTHORITIES

Cases:

Chambers v. Local 639, Teamsters (CADC, 1973), 558 F2d 375, 387, 388 10

Clayton v. International Union, UAW, U.S. S.Ct. 1981, No. 80-5049, 101 S.Ct. 2088 10

Davidson v. Roadway Express (CA 7, 1981), 107 L.R.R.M. 2441, 650 F2d 902 7

TABLE OF AUTHORITIES (Cont'd.)

Cases (Continued): Page

Miller v. Gateway Transportation Co., and Teamsters Local 710, (CA 7, 1980) 616 F2d 272, 275 10

Nevils v. McDowell Contractors (USDC/TENN 1981) Civil No. 80-3263 7

Parklane Hosiery Company, Inc., v. Leo M. Shore (1979) 439 U.S. 322, 99 S.Ct. 645..... 8

Sear v. Cadillac Automobile Co., (CA 1, 1981) 107 L.R.R.M. 3218 6

Smart v. Ellis Trucking (CA 6, 1978) 508 F2d 215 Cf 6

United Parcel Service v. Mitchell 101 S.Ct.1559.. 3,6

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

No. 81-475

EASTERN CONFERENCE OF TEAMSTERS,

Cross-Petitioner,

V.

RONALD SINE AND LARRY DANNER,

Cross-Respondents.

BRIEF IN OPPOSITION

STATEMENT OF THE CASE

This Brief filed by employees Sine and Danner opposes the Cross-Petition of the Eastern Conference of Teamsters Labor

Organization, sued by Sine and Danner for breach of duty of fair representation. (The Cross-Petition has been consolidated with employees' Petition to this Court in No. 81-314). Both Petition and Cross-Petition raise the question of the Statutes of Limitations to be applied to suits for breach of duty of fair representation against labor organizations and against employers for breach of collective bargaining agreements. The United States Court of Appeals in its Decision reported at 644 F2d 997, held that the 30-day Statute of Limitations of the Maryland Arbitration Act barred the contract action against the employer, but not the fair representation claim, against the Union, since the Circuit Court remanded to the District Court for reconsideration of the fair representation issue. Employees here oppose the Cross-petition of the Union which contends for application

of the same Statute of Limitations as that applied to the employer, "if (The Supreme Court of the United States) grants a Writ in Case No. 81-314 (Employees' Petition)." (Cross-Petition Page 9, Matter in parentheses and emphasis supplied).

Employees contend that the effect of the Fourth Circuit Court of Appeals decision in remanding the case for trial against the Union, is to leave open to employees a perfectly viable claim of unfair representation in the nature of malpractice against the Union, coupled with a breach of contract by the employer, albeit the latter was held barred. With great respect and utmost deference to the dissenting opinion of MR. JUSTICE STEVENS in United Parcel Service v. Mitchell U.S. 101 S.Ct. 1559, footnote 4, without an underlying breach of contract by the employer there can be no damages and no recovery in a suit for breach of duty of fair

representation.

This requires a supplementation by employees of the Union's Statement of the Case. The "malpractice" charged by employees against The Union in this suit consisted, in part, of the Union's failure to argue forcefully to the arbitrator the res judicata effect of the Fourth Circuit Court of Appeals decision in Case No. 76-1201, 1202, and the Union attorney's admitted failure to read employees' winning brief in that case or to file it with the arbitrator or argue it. In addition, the Union represented conflicting interests in Sine and Danner's arbitration by representing high seniority employees (See Petitioners' Appendix in No. 81-314, P. 52). Obviously, the Union's failure to seek U. S. District Court timely review of the Arbitrator's

decision is an additional basis for the allegation of "malpractice," - "unfair representation."

Open hostility to the employees has been manifested by the Union for almost ten years, first on The Record in Case No. 76-1201, 1202, and in this case by the statements of Conference Employee Shelton who stated no (expletive) lawyer was going to run his Committee (after the Union was threatened with suit if it failed to send the case to arbitration) and Conference Employee Neidig's remark that employees would be old men with green beards before they got any back pay.

SUMMARY OF ARGUMENT

I. The Union's contention that employees have no claim against the Union once the suit against the employer is time barred is incorrect.

II. The defense concerning exhaustion of internal union procedures is not available to the Union in this case.

III. Whether this action proceeds against the Union alone or the Union and the employer, this Court should rule that the Decision in Case No. 76-1201 establishes a breach of the collective bargaining agreement, binding on the parties under the principal of res judicata.

ARGUMENT

The Union contends that the same Statute of Limitations should be applied to both Union and Employer because the Union claims there can be no recovery if suit against the employer is time-barred. This is not the law, Cross-Respondent contends. See Smart v. Ellis Trucking (CA 6, 1978) 508 F2d 215 Cf, dissenting opinion of MR. JUSTICE STEVENS, Note 4, United Parcel Service v. Mitchell, U.S. 101 S. Ct. 1559 , 1981. Sear v.

Cadillac Automobile Co., (CA 1, 1981) 107 L.R.R.M. 3218, Davidson v. Roadway Express (CA 7, 1981), 107 L.R.R.M. 2441. See also Nevils v. McDowell Contractors (U.S.D.C./TENN. 1981) Civil No. 80-3263. As this Court has repeatedly stated, the employee can sue the Union or the employer or both; in each case the burden is the same, there must be proof of both a breach of duty of fair representation and a breach of contract. If the Union was right in this case, it could escape liability by committing the most blatant act of unfair representation by letting the Statute of Limitations lapse (as it has done, ostensibly, at this stage of the case at bar, by failing to sue within thirty days to set aside the arbitration award). It is submitted that the lower Court was correct in holding, impliedly, that a different statute of limitations applies

to the Union than that applied to the employer.

However, the lower Court erred, Cross-Respondents submit, in declining to rule that its original final judgment in Case 76-1201, 1202 was res judicata as to the liability of both Employer and Union, whether time barred or not. As to this, the law is clear, as this Court has recently decided. Parklane Hosiery Company, Inc. v. Leo M. Shore (1979) 439 U.S. 322, 99 S.Ct. 645. Thus, for purposes of determining damages against the Union on remand, the Fourth Circuit Court of Appeals should have reversed the District Court on its denial of res judicata effect of the Fourth Circuit Judgment in Case No. 76-1201, 1202 (Appendix B-12, C 4, 5, Appendix to Petition 81-314, P. 50). This Court should exercise its power of supervision over the Circuit Court of Appeals and reverse that Court's judgment on the

res judicata point.

Again, the Fourth Circuit's reversal of the judgment against the Union and in the employees' favor, implies as a matter of law, employees contend, that there is an underlying breach of contract by the employer. Plainly, this is based on the res judicata effect of the prior judgment. Otherwise, remand for a trial if the employer had not breached the contract would be a useless proceeding with no damages in the form of back pay.

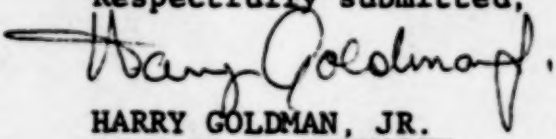
As to exhaustion of internal Union procedures, the Union's attorney had determined not to file suit to set aside the arbitration award and refused the employees demand to do so. With only 30 days to sue, or 90 to 120 days, if employees prevail in Case No. 81-314, nowhere does Cross-Petitioner demonstrate that internal procedures could be exhausted in time to avoid limitations, as the Union must. See

Clayton v. International Union, UAW U.S. 101 S.Ct. 2088, 1981, No. 80-5049, and the dissenting Opinion of MR. JUSTICE REHNQUIST suggesting a four-month exhaustion requirement. Moreover, remedies under the Teamsters Constitution involved in the case at bar have many times been weighed in the balance, as to adequacy, and found wanting by the Courts. See Chambers v. Local 639, Teamsters (CADC, 1978), 558 F2d 375, 387, 388, Miller v. Gateway Transportation Co., and Teamsters Local 710, (CA 7, 1980) 616 F2d 272, 275. In this case, in addition, the hostility of the Union toward employees is palpable and proved by the Record. A requirement of exhaustion of internal Union remedies, Cross-Respondents submit, is simply not in the case and Cross-Petitioners attempt to raise it is frivolous.

CONCLUSION

For the aforegoing reasons Petitioners in No. 314 and Cross-Respondents here pray that the Cross-Petition be denied.

Respectfully submitted,



HARRY GOLDMAN, JR.
RICHARD P. NEUWORTH
Counsel for Cross-Respondents
and Petitioner in No. 81-314

October 16, 1981

Office - Supreme Court, U.S.
FILED
OCT 26 1981
ALEXANDER L. STEVAS
CLERK

No. 81-475

In The

Supreme Court of the United States

OCTOBER TERM, 1980

EASTERN CONFERENCE OF TEAMSTERS,

Cross-Petitioner,

versus

RONALD SINE AND LARRY DANNER,

Cross-Respondents.

REPLY MEMORANDUM IN SUPPORT OF CROSS-PETITION ON BEHALF OF THE EASTERN CONFERENCE OF TEAMSTERS

JONATHAN G. AXELROD
(Counsel of Record)
HUGH J. BEINS

Beins, Axelrod & Osborne, P.C.
1511 K Street, N.W., Suite 300
Washington, D.C. 20005
(202) 638-4620

Attorneys for Cross-Petitioner,
Eastern Conference of Teamsters

C 442

In The

Supreme Court of the United States

October Term, 1980

No. 81-475

Eastern Conference of Teamsters,

Cross-Petitioner,

v.

Ronald Sine and Larry Danner,

Cross-Respondents.

REPLY MEMORANDUM IN SUPPORT OF CROSS-PETITION ON BEHALF OF THE EASTERN CONFERENCE OF TEAMSTERS

---

1. In their Brief in Opposition to the Conference's Cross Petition for a Writ of Certiorari, Sine and Danner present a new issue for resolution by the Court, an issue that the Court cannot reach unless the Cross-Petition is granted. Sine and Danner's own Petition asks the Court to consider whether Maryland's thirty day statute of limitations is impermissibly short. Sine and Danner should not be allowed to supplement their petition by raising new questions after filing their original

petition unless they show good reason for failing to present the questions at the proper time. The orderly presentation to, and decision by, this Court of certiorari petitions would be disrupted if parties were free to supplement their petitions by amendments and additions raising new issues. The Court's rules and practice do not contemplate such a procedure (See Rules 21(1)(a), 22(1), (5) and (6) and 42) and we submit that it should not be countenanced unless very good cause is shown. *See Costello v. United States,* 365 U.S. 265, 284 (1961).

2. Sine and Danner recognize that to prevail against the Union, "there must be proof of *both* a breach of duty of fair representation *and* a breach of contract" (Brief in Opposition, p. 7)(emphasis in the original). Sine and Danner then ignore the simple fact that they cannot prove a breach of contract without setting aside the arbitration award. Their own attorney's failure to file a timely suit is responsible for this impossibility.

3. The District Court clearly rejected Sine and Danner's *res judicata* argument (Cross-Pet. App. C-4-5). The Court of Appeals did not consider the issue (Cross-Pet. App. B-12). Sine and Danner err, therefore, in asserting (Brief in Opposition, p. 9) that the Court of Appeals implicitly accepted their argument.

4. Sine and Danner also misinterpret the Conference's position with regard to the duty to exhaust internal union remedies. The Conference does not argue that the duty to exhaust would apply *if* the Conpany were still a party in the case, as it would be if the Court invalidates the Marland statute of limitations. The Teamster's internal union procedure can adequately redress a breach of the duty of fair representation in which the only remedy is attorney's fees. Neither *Miller v. Gateway Transportation Co., Inc.*, 516 F.2d 272, 275, n.4 (7th Cir. 1980) nor *Chambers v. Teamsters Local 639,* 578 F.2d 375, 387-388 (D.C. Cir. 1978) conclude that the Teamster pro-

cedure is unadequate to provide a monetary remedy where no employer is involved in the litigation. In any event, Sine and Danner did not argue below that the internal union procedure was inadequate and may not do so for the first time before this Court.

CONCLUSION

For the reasons stated herein and in the Conference's Cross-Petition, the Conference respectfully asks the Court to grant the Cross-Petition if the Petition is granted.

JONATHAN G. AXELROD
(Counsel of Record)
HUGH J. BEINS
WILLIAM W. OSBORNE, JR.
Beins, Axelrod & Osborne, P.C.
1511 K Street, N.W., Suite 300
Washington, D.C. 20005
(202) 638-4620

Attorneys for Cross-Petitioner,
Eastern Conference of Teamsters

October, 1981